



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Bert Ford, Administrator  
Texas Liquor Control Board  
Austin, Texas

Dear Sir:

Opinion No. O-3208

Re: Would the Texas Liquor Control Board have the authority to authorize the medicinal pharmacy permit to be moved from Levelland, Texas, in commissioners' precinct No. 2 to the unincorporated town of Sundown also located in commissioners' precinct No. 2 under the facts stated?

Your recent request for an opinion of this department upon the above stated question has been received.

We quote from your letter as follows:

"This inquiry is relative to the moving of a Medicinal Pharmacy permit from Justice Precinct No. 8, Rockley County, Texas, which is also Commissioners Precinct No. 2, in Levelland to Sundown, Texas. Sundown, Texas, is in Commissioners Precinct No. 2 and also Justice Precinct No. 2, and is an unincorporated town.

"Would the Texas Liquor Control Board have the authority to authorize this permit to be moved from Levelland, Texas, in Commissioners Precinct No. 2 to the unincorporated town of Sundown also located in Commissioners Precinct No. 2?

" . . . . "

Subdivision 18, Section 15 of Article 1 of the Liquor Control Act (Article 666-15, Vernon's Annotated Penal Code) reads as follows:

"Medicinal Permits. Retail Pharmacists shall be entitled to receive medicinal permits and sell or dispense liquor for medicinal purposes only. The holders of such permits are authorized to purchase liquor from holders of wholesaler's permits in this State. Any pharmacy for which a permit is sought must be a bona fide pharmacy registered with the State Board of Pharmacy; must employ and have on duty at all times a registered pharmacist and must have been in operation as a pharmacy for at least two (2) years in the particular political subdivision in which a permit is sought.

". . ."

Section 10 of Article 1 of the Texas Liquor Control Act (Article 666-10, Vernon's Annotated Penal Code) reads in part as follows:

"Every applicant for a Pharmacist's Medicinal, . . . under this Act shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which applicant's place of business is located. Provided, however, that in such instances where no newspaper is published in the city or town, then the same shall be published in a newspaper of general circulation published in the county where the applicant's business is located, and if no newspaper is published in the county, the notice shall be published in a qualified newspaper which is published in the closest neighboring county and circulated in the county of applicant's residence. Such notice shall be printed in ten (10) point black face type and shall set forth the type of permit to be applied for, the exact location of the place of business, the name of the owner or owners thereof, and if operating under an

Honorable Bert Eard, Administrator, Page 3

assumed name, the trade name together with the names of all owners, and if a corporation, the names and titles of all officers. The cost of such notice shall be borne by the applicant."

After carefully considering Article 1 of the Liquor Control Act, we find that justice precincts and incorporated cities or towns are the only political subdivisions of a county which are referred to in said act. The act does not include a commissioners' precinct as a political subdivision with reference to Section 1 of the Texas Liquor Control Act.

We quote from our opinion No. O-1111 as follows:

"The Liquor Control Act is restrictive. The evident purpose of the provisions with reference to pharmacy permits is to limit those eligible for the permit so as to protect the particular community from being flooded with mushroom pharmacies dispensing liquor under liquor permits. The quotation above from Section 10 of the Act evidences that the Legislature had in mind incorporated cities and precincts as political subdivisions of the State.

"In view of the quoted provisions and the evident purpose of the Act, it is our opinion that the Legislature, by the language, 'particular political subdivision', meant the particular subdivision in which the business is located at the time the application is made, and that if that business is located within an incorporated city, then the pharmacy must have been in operation within the incorporated city for a period of two years.

"In our opinion, the phrase used does not refer to the county as the particular political subdivision, but it does refer to the city or the precinct in which the business is located and has been operated for a period of two years."

Honorable Bert Ford, Administrator, Page 4

As the above mentioned opinion was addressed to you we do not enclose a copy of the same herewith.

Under the facts stated in your inquiry, it is shown that the medicinal pharmacy permit is to be removed from justice precinct No. 8 in Hookley County, Texas, to justice precinct No. 2 of said county, both of said justice precincts being in commissioners' precinct No. 2. In other words, the medicinal pharmacy permit is to be removed from one justice precinct to another justice precinct which are located in the same commissioners' precinct. We believe that the moving of the medicinal pharmacy permit in the manner above stated would be to move the same from one particular political subdivision to another political subdivision of the county and would be in violation of subsection 18 of Article 1 of the Liquor Control Act, above quoted. Therefore, we respectfully answer the above stated question in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Ardell Williams  
Ardell Williams  
Assistant

AW:GO

APPROVED MAR. 15, 1941  
(Signed) Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE  
BY E.W.B. CHAIRMAN